

**BOARD OF ADJUSTMENT MINUTES
NOVEMBER 09, 2005**

PRESENT:	George Berkley Don Peart Marilyn Peterson Martha Shoun Jess Palmer	Chairperson Vice Chairperson Board Member Board Member Board Alternate
ALSO PRESENT:	Jeff Leishman	Zoning Administrator

AGENDA:

- Approval of agenda.
- Approval of minutes for the August 10, 2005 meeting.

Meeting convened at 5:30 P.M.

Approval of Agenda:

Motion:

A motion was made by Martha Shoun to approve the agenda. The motion was seconded by Don Peart and the motion carried.

Approval of Minutes:

Motion:

A motion was made by Don Peart to approve the minutes for August 10, 2005. The motion was seconded by Martha Shoun and the motion carried.

Application #602 – Variance / 2995 West Forest / Roger Apodaca.

Mr. Apodaca was invited to the table. He submitted a side-yard variance request for a garage on property located at 2995 West Forest Street. The required lot area in that zone is five-acres. The actual lot area is .08 acres which is significantly less than five-acres. The required lot width is 200-feet. The actual lot width is 45-feet. Required side yard is 20-feet, each side. The proposed side yard on the east is 4-feet and the west is 11-feet. The required rear yard is well in compliance. This is by definition, legal nonconforming. Due to the narrow lot width, Mr. Apodaca could only construct a five-foot wide garage unless a variance is approved.

There has been no response from the neighbor notification.

Mr. Apodaca stated:

- I. The restrictions on the lot size will only allow him to build a five-foot wide garage which is not large enough to place a car in.
- II. This lot has been around for a considerable amount of time. He grew up next door. Prior to annexation into the City this lot was located in the County.
- III. Any home should be allowed to have a garage. Other homeowners have that right and he believes he should have that right also.
- IV. He believes that his request is not unreasonable and will not be contrary to the General Plan or the general public.
- V. He believes he request will not harm the zoning code.

Motion:

A motion was made by Don Peart to allow the variance that is being requested based on:

- I. Literal enforcement of the zoning ordinance would cause an

unreasonable hardship for the applicant. It is not necessary to carry out the general purposes of the zoning ordinance that hardship being lot size. Mr. Apodaca cannot build reasonable size garage five-feet wide. The zoning ordinance would restrict the building to five feet wide and Mr. Apodaca has the right to build a useable garage for a car and accessories.

- II. There are special circumstances attached to the property that do not generally apply to other properties in the same district. The lot size is a special circumstance being the smallest in that area. Also the City annexing the property in the last two years has caused it to be legal-nonconforming.
- III. Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same district which has been discussed. Other properties in the same area have garages.
- IV. The variance would not substantially affect the General Plan and would not be contrary to public interest. This is true in that the lot is there and already has a home on it. It would actually enhance the property and the living area.
- V. The spirit of the zoning ordinance is observed and substantial justice done to allow him to have a garage at his house.

The motion was seconded by Jess Palmer.

Mr. Berkley recommended that the motion be amended to include the fact, for item number II, that the house is already there.

Motion:

Mr. Peart amended his motion to include that the house is already built on the property with the same variances. The motion was seconded by Martha Shoun and the motion unanimously carried.

Application #603 – Variance / 324 West 200 North / Justin Dickamore

Justin Dickamore and Brent Dickamore were invited to the table.

Mr. Leishman found in the Courthouse records a deed that is dated 1967 which showed that this lot existed, 98-feet wide and 58-feet deep. This lot would have come into the new ordinance in 1973 identified as a legal nonconforming lot and was vested with the right to become or allowed a single family dwelling. The required front yard setback was 25-feet. The proposed front yard setback is 20-feet. The required rear yard setback is 25-feet. The proposed rear yard setback is 10-feet. The required lot coverage is 35 percent and if the home were expanded to what they are showing, the proposed lot coverage would be 40 percent. Chapter 29.03.020 was discussed in detail. Mr. Leishman also informed the Board he had been directed by his supervisor to discuss this application with Craig Call, State of Utah Property Ombudsman. Mr. Call informed Mr. Leishman that if this is a legal nonconforming lot and the ordinance allows a home to be built on a legal nonconforming lot but the owner is prohibited from the enjoyment of the property due to some regulation...and “all reasonable usage of the property is taken away, then it may be classified as a taking.” Mr. Call further stated, “The Board of Adjustment does not need to give the applicant all that is requested, but they need to give enough to allow a reasonable home to be built.”

Justin Dickamore stated:

- I. The current condition of the lot is a weed patch and the value of the lot is compromised for the current owner. It would appear from the plot plan that the intent was for this lot to be a buildable lot.
- II. The size and depth of the lot is similar to the adjacent lots. This area is from the old plot plan and layout. Layout and property lines were developed from there.
- III. By utilizing the property as a building lot, this would eliminate an unsightly vacant lot.

- IV. The lot was established on the old plot plan as a buildable lot not to be left as a vacant parcel with the possibility of lack of maintenance causing the neighborhood problem.
- V. By granting the variance, it will increase the tax base by developing the property and also be eliminating a fire and safety hazard that exists with current condition of the lot.

The audience was invited to come forward and make comment.

Dena Nutt came forward and stated that she did not believe that the lot was intended for a single family dwelling. Previously at that location, there was a garden spot and a garage that belonged to the home on the lot next to it. She stated that she isn't opposed to having something there; she is concerned about the value of her property changing if the variances are granted to this property. The lot is very small and parking is a concern.

Sally Wright, a resident of 211 North 300 West, came forward and stated that she spoke with many different neighbors and they had many different concerns such as parking. They are concerned that there is not enough room for a driveway if the home is built on this property which would create more crowding of vehicles in the street. One neighbor stated to her concern about her irrigation lines. In Ms. Wright's view, there are infinite building lots available in Box Elder County and variances are for small exceptions and for things that cannot be helped. Not when the lot is too small and inappropriate for a single family dwelling and every exception in the book needs to be done to make it work. There are wires and a telephone pole in the center of this lot, that she believes make it inappropriate for a single family dwelling also. She said that the neighbors would not make any fuss over a garage, shed, a garden plot or other development that is small enough to match the size of the property. She asked that the variances be denied.

Mr. Leishman recommended continuing this item to the next meeting so the information regarding past decisions on this property can be researched.

Mr. Brent Dickamore stated that with the planned garage for the proposed home there would not be an issue with parking on the street. The proposed house is smaller than other houses in the neighborhood. The 35% coverage can be matched.

Motion: A motion was made by Martha Shoun to table this item until the meeting in December. The motion was seconded by George Berkley.

Discussion on the motion: Don Peart suggested tabling this petition until it is determined whether there is any other information of denial in 1998.

Amended Motion: Martha Shoun moved to amend her motion as suggested by Don Peart. The motion was seconded by Jess Palmer.

Discussion on the amended motion: Mr. Leishman clarified that the item should be continued not tabled. Tabling would end the item completely. Marilyn Peterson stated that she felt the applicant deserved to have everything prepared for the next meeting and needs to be continued in an expedient manner. Mr. Leishman informed the applicant that they had the right to call a special meeting if the next scheduled meeting did not work within their time frame.

Mr. Leishman read the bylaws to the Board and stated that re-advertising this application would not be necessary due to the fact that it was already advertised and those who wanted to be here were. Twenty-four hour notice must be given to the Board members to call a special meeting.

Mr. Leishman stated that he will search for a 1998 case which could be done during the next business day. Marilyn asked for information on takings and 29.03.02.0 substandard code.

It was decided that November 16, 2005 would be the best date for the special meeting.

Amended Motion: Don Peart moved to amend the motion to continue the motion to November 16, 2005 at 5:30 p.m. Martha Shoun agrees to the amended motion. The motion was seconded by Jess Palmer and the motion carried.

Board Alternate Jaye Poelman was in attendance at the meeting of the Board of Adjustment on November 09, 2005 and heard the discussion and did not participate in those discussions. He will be sitting in for Marilyn Peterson on November 16, 2005 for the special meeting.

Motion:

Don Peart made a motion to adjourn. The motion was seconded by Marilyn Peterson and unanimously carried.

The meeting adjourned at 6:50 PM.

This certifies that the minutes of November 09, 2005 are a true and correct copy as approved by the Board of Adjustment on _____.

Signed: _____
Jeffery R Leishman - Secretary